

From: ["Brown, Leah" <Brown.Leah@epa.gov>](mailto:Brown.Leah@epa.gov)
To: ["Croxtion, David" <Croxtion.David@epa.gov>](mailto:Croxtion.David@epa.gov)
["Zell, Christopher" <zell.christopher@epa.gov>](mailto:zell.christopher@epa.gov)
CC: ["Mann, Laurie" <mann.laurie@epa.gov>](mailto:mann.laurie@epa.gov)
Date: 10/20/2017 12:51:43 PM
Subject: RE: INTERNAL and DELIBERATIVE - draft Deschutes Briefing Paper for Dan and Jim
Attachments: Deschutes TMDL NOI Briefing_draft 10162017_LB.docx

Hi Chris,

Thanks so much for putting this together. My thoughts, along with options, are attached. I'm not sure if this is the only briefing paper we'll be using or if there's a second recommendation paper that will be forthcoming, so let's touch base on that when you get a chance.

I have a few other questions, but looks like we have time scheduled for early next week, so I'll wait until then.

Have a great weekend,

Leah

From: Croxtion, Dave
Sent: Friday, October 20, 2017 11:03 AM
To: Zell, Christopher ; Brown, Leah
Cc: Mann, Laurie
Subject: RE: INTERNAL and DELIBERATIVE - draft Deschutes Briefing Paper for Dan and Jim

Hi Chris,

Well-written document. I have some minor edits in red in the first 3 pages. FOIA exemption (b)(5)

thanks

From: Zell, Christopher
Sent: Monday, October 16, 2017 2:14 PM
To: Brown, Leah <Brown.Leah@epa.gov>; Croxtion, Dave <Croxtion.David@epa.gov>
Cc: Mann, Laurie <mann.laurie@epa.gov>
Subject: INTERNAL and DELIBERATIVE - draft Deschutes Briefing Paper for Dan and Jim

ATTORNEY-CLIENT PRIVILEGE

Your input, perspectives, and 'smithing' is requested at your earliest convenience ☐ .

Thank you,

Chris

request that EPA approve allocations for 71 (actually 73) Water Quality Limited Segments (WQLSs) impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment). Beginning in February 2016, EPA has discussed with Ecology opportunities to remedy legal and technical shortcomings of the TMDL that have been identified by both EPA (WU, ORC) and potential plaintiffs (NWEA, Squaxin Island Tribe). Such TMDL shortcomings or issues are provided as [Appendix A](#) to this brief.

FOIA exemption (b)(5)

FOIA exemption (b)(5)

Deschutes (WA) TMDL Key Dates^[BL9]

Dates	Event
2004	Sampling Plan Completed
2003 – 2007	Monitoring
2007 – 2014	TMDL Development
April 2014	Announcement to Submit Freshwater Components Only
December 2015	<u>Ecology sSubmitted</u> TMDL to EPA
February - October 2016	Concerns EPA shared <u>concerns</u> with Ecology
June 2016	Squaxin Island Tribe – Tribal Coordination Meeting
August 2016	<u>Ecology/EPA</u> Discussion with NWEA in Portland, OR
September 2016	<u>EPA Rrequested</u> Ecology to Withdraw TMDL
January 2017	Puget Sound FOIA <u>received from NWEA</u>
March 2017	EPA Developed Bacteria TMDLs
June 2017	EPA & Ecology Negotiated <u>“Resubmit”</u> Letter
July 2017	<u>EPA Received</u> Resubmit Letter from Ecology
August 2017	<u>EPA Sshared</u> Draft Approval Letter with HQ
August 2017	<u>EPA Received</u> Deschutes NOI from NWEA
October 5, 2017	<u>EPA</u> Withdrawal Discussion with Ecology
October 13, 2017	<u>EPA/Ecology</u> Discussion with NWEA <u>re: NOI</u>

V. KEY ISSUES

F ~~_____~~
O ~~_____~~
I ~~_____~~

Appendix A itemizes EPA and NWEA concerns related to the Deschutes TMDL. In addition, please note these observations:

- (b)(5) attorney-client [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

VI. REGULATORY SUMMARY (if appropriate)

40 CFR 130.7(d)(2): *"The Regional Administrator shall either approve or disapprove such listing and loadings not later than 30 days after the date of submission...."* [BL10]

VII. ADDITIONAL POLICY AND LEGAL INFORMATION

Section 303(d)(2) of the CWA requires EPA to "either approve or disapprove [a TMDL] not later than thirty days after the date of submission." If EPA disapproves a TMDL, Section 303(d)(2) requires EPA to issue a substitute TMDL within 30 days of disapproval.

Ecology submitted the Deschutes River TMDL in December 2015, and EPA has not acted. (b)(5) attorney-client

[REDACTED]

[REDACTED]

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

(b)(5) attorney-client

-

X.

To be determined following identification of recommendation.

(b)(5) attorney-client

	<ul style="list-style-type: none"> <ul style="list-style-type: none"> 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
			<ul style="list-style-type: none">
	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">

APPENDIX A - NWEA Concerns

Ecology scheduled a meeting with Nina Bell on August 2, 2016 in Portland, OR (at OR Ops office) to obtain NWEA feedback on the Deschutes TMDL as she had indicated unspecified concerns with the TMDL in previous discussions. Laurie Mann and Chris Zell participated in the meeting at the request of Ecology. Overall, Nina expressed an unfavorable opinion of the TMDL and summarized that the TMDL will not change or improve existing conditions. Nina did offer a potential 'carve-out' from the NCC remand for temperature segments of the Deschutes if buffer requirements were more detailed and were placed into the load capacity/allocation section of the TMDL. Nina explained the DO segments (and maybe pH by reference) of the TMDL were too problematic/flawed and should not move forward (no 'carve-out').

NWEA	Ecology	EPA
<ul style="list-style-type: none"> (1) Unconvinced that TMDL will change existing water quality conditions. (2) Downstream waters not protected (self-stated). Failing to protect DS waters is a big deal. TMDL is kind of a shell because it does not deal with DS waters or tributaries. (3) Buffers show up in implementation rather than allocation section. (4) Need to convert shade values into real, implementable surrogates. How was 75 ft. buffer determined? Vertical and areal density is important. What is mature vegetation? (5) The entire TMDL seems to be a surrogate. Suite of shade surrogates may be needed. Why was channel width not allocated as it was part of NCC demonstration. (6) Compliance with permit seems to be compliance with TMDL as WLAs are mostly existing permit conditions or restated WQS. WLAs do not seem to add value. (7) Using shade as surrogate for parameters other than temperature creates holes. (8) TMDL does not assess if current landuse practices, such as forestry, contribute to sediment impairments. (9) Reasonable Assurance section is inconsistent. Should consider actions that are not already occurring. Deferring to Fish and Forest assurances is a problem. (10) TMDL cites nutrient hotspots and impacts but does not limit nutrients. TMDL advocates a 'we'll evaluate later' approach to septs and other nutrient sources. (11) Better to wait until Budd Inlet and Capital Lake TMDL are complete. Maybe move forward with temperature segments only. (12) Lack of NCC is not an excuse to do nothing. Use the data we have and 	<ul style="list-style-type: none"> (1) An approved TMDL may help in retiring water rights and obtaining grant funds. An approved TMDL may help bring government partners to the table such as Thurston County and get conservation districts to work together. (2) Acknowledged the TMDL has some deficiencies and is working with EPA on some issues. Benefits of TMDL are relatively minor. (3) TMDL was split because of the contentious nature of Capital Lake and Budd Inlet. Data would become outdated if Ecology waited to do all waters at once. Evidence is pointing primarily to shade and buffers for the Deschutes. (4) Any buffers that Ecology pays for would have to meet NMFS buffer rule (100 ft rather than 75 ft.). 	<p>We primarily listened and took notes. Chris asked Nina to elaborate on Columbia dioxin TMDL and checkpoint approach.</p>

<p>move forward. No good reason for putting things off. The TMDL should have addressed nutrients even if data were not perfect.</p> <p>(13) TMDL does not justify in-stream sediment fines target. How does in-stream fine targets align with WQS?</p> <p>(14) Ecology is hesitant to address Capitol Lake because of benefits as sediment trap, better than a muddy estuary, expensive infrastructure changes (Lake outlet works, MS4, LOTT facility).</p> <p>(15) Checkpoint approach used in Columbia dioxin TMDL is an appealing large watershed approach.</p> <p>(16) Ecology should not get credit for a TMDL when the allocations do not resolve the DO and nutrient issue.</p> <p>(17) Margin of safety and antidegradation section is confusing</p> <p>(18) Would be willing to consider temperature carve out of NCC remand. TMDLs for DO, pH should not move forward until Budd Inlet is completed. Opinion on sediment was limited.</p>		
---	--	--